IN THE HIGH COURT OF GUJARAT AT AHMEDABAD

SPECIAL CIVIL APPLICATION No 5580 of 2004
with
SPECIAL CIVIL APPLICATION No 5530 of 2004

For Approval and Signature:

HON'BLE MR.JUSTICE M.S.SHAH

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1. Whether Reporters of Local Papers may be allowed to see the judgements? : NO

2. To be referred to the Reporter or not? : NO

3. Whether Their Lordships wish to see the fair copy of the judgement? : NO

4. Whether this case involves a substantial question of law as to the interpretation of the Constitution of India, 1950 of any Order made thereunder? : NO

5. Whether it is to be circulated to the concerned Magistrate/Magistrates,Judge/Judges,Tribunal/Tribunals? : NO

JATAN VIDYALAYA

Versus

DIST. EDUCATION OFFICER

Appearance:

1. Special Civil Application No. 5580 of 2004
MS MAMTA R VYAS for Petitioner No. 1-2
MR NAGESH SOOD, AGP for Respondent No. 1
MR RR VAKIL for Respondent No. 2

2. Special Civil Application No. 5530 of 2004
MR RR VAKIL for Petitioner No. 1
Ms MAMTA R VYAS for Respondent No. 1-2
MR NAGESH SOOD, AGP for Respondent No.3

CORAM : HON'BLE MR.JUSTICE M.S.SHAH

Date of decision: 12/10/2004

COMMON ORAL JUDGEMENT

Rule. The learned counsel for the respective

respondents waive service of Rule.
In the facts and circumstances of the case, the petitions are taken up for final disposal today.

2. Both these petitions challenge the judgment dated 24.11.2003 of the Gujarat Secondary Education Tribunal in Application No. 651 of 1995 which was filed by Khodidas Ravjibhai Chavada who was appointed as a Peon in Jatan Vidyalaya, Ahmedabad by order dated 13.8.1994 in the pay-scale of Rs.750-940 at the minimum of the pay-scale. The application was filed to challenge the inaction on the part of the District Education Officer in not approving the said appointment inspite of the fact that the DEO's representative was present at the interview which was held on 12.8.1994 pursuant to an advertisement issued in Sandesh dated 13.3.1994 for which the No Objection Certificate was given by the DEO on 11.3.1994.

3. The DEO's submission at the hearing on 2.2.1996 was that the procedure for appointment was stayed by the office of the Commissioner of Higher Education vide his letter dated 26.7.1995 and, therefore, the approval was not given. On 2.2.1996 the Tribunal passed the following interim order :-

"Heard. DEO is directed to start paying regular salary to applicant from this month onwards subject to result of this application."

4. When the application reached hearing sometime in November, 2003, the DEO's representative prayed for time to produce a copy of the aforesaid letter dated 26.7.1995 of the Commissioner of Higher Education. However, at the next hearing on 24.11.2002, the DEO's representative was not present. So also none was present for the school management. The Tribunal, therefore, drew an adverse inference of collusion between the DEO and the school management and it, therefore, appears that out of exasperation the Tribunal vacated the interim order and disposed of the application by directing the school management to pay the applicant salary in arrears from August, 1994 to February, 1996 within one month from the date of receipt of the order with simple interest at the rate of 9% p.a., making it clear that while the school management was to go on paying salary to the applicant regularly at the end of every month in accordance with law, the DEO shall not pay salary to the applicant under direct payment scheme meaning thereby the Tribunal took the view that since the appointment of the applicant was not approved by the DEO, the DEO was not to pay salary to the applicant-peon, but the school management only was to

shoulder the burden of the applicant's salary.

5. It appears that after the aforesaid judgment was delivered on 24.11.2003, the school management preferred a review application on 4.2.2004. The learned counsel for the school management states that the Tribunal has dismissed the said review application on 10.3.2004, but the copy of the said order has yet not been made available to the school management. The school management moved Special Civil Application No. 5580 of 2004 on 15.4.2004 and this Court issued notice on 4.5.2004. By way of ad-interim relief, this Court also granted stay against recovery from the management pursuant to the Tribunal's order under challenge in these petitions.

The same order of the Tribunal has also been challenged by the original applicant in SCA No. 5530 of 2004 who was appointed as Peon by the school management by order dated 13.8.1994.

6. The learned counsel for the school management, however, submits that when the DEO had granted the NOC on 11.3.1994 and the school management had published the advertisement in Sandesh on 13.3.1994 and the selection committee, including the representative of the DEO had held interviews on 12.8.1994 and selected Khodidas Ravjibhai Chavada and the proposal was submitted by the school management to the DEO on 18.8.1994, the DEO was not justified in not granting the approval on the basis of the subsequent instructions dated 26.7.1995 imposing ban on recruitment which were issued almost one year after the selection and proposal to the DEO. It is further submitted that when the Tribunal had already passed interim order dated 2.2.1996 after considering the aforesaid reply of the DEO, the Tribunal ought not to have drawn adverse inference against the school management for their absence.

It is stated by the learned counsel for the school management that the applicant has been paid salary for the period from November 2003 till September 2004 without receiving any grant from the DEO.

7. As already indicated earlier, it was on account of the absence of all the opponents that the Tribunal had passed the impugned order. In this view of the matter, since all the opponents had not remained present before the Tribunal and the matter was not examined on merits of the contentions which are being urged by the school management, it appears to the Court that the interests of

justice require that upon the school management paying the costs and filing an undertaking that the school management will remain present at the hearing before the Tribunal, the matter is required to be remanded to the Tribunal.

8. Accordingly, the petitions are allowed in terms of the following directions :-

(i) The judgment dated 24.11.2003 of the Tribunal in Application No. 651 of 1995 is set aside, subject to the condition that the school management of Jatan Vidyalaya, Ahmedabad shall deposit a sum of Rs.5,000/- with the Registry of the Tribunal and the Managing Trustee of the Trust running Jatan Vidyalaya files an undertaking to remain present before the Tribunal at all subsequent hearings within two weeks from today. After the amount is deposited and the undertaking is filed, the Tribunal shall hear Application No. 651 of 1995 on merits and in accordance with law. Depending upon the outcome of the said application, the Tribunal shall decide whether the amount so deposited by the school management should be paid over to the DEO or to the applicant.

(ii) Since the interim order passed by the Tribunal had continued from 2.2.1996 onwards for a period of seven years, the said interim order shall continue till final disposal of the application. The Tribunal shall hear and decide the application expeditiously and preferably within three months from the date of receipt of the writ of this Court.

(iii) This order shall not be construed as any direction to the DEO to give any salary grant to the school management for the applicant's salary for the period from November 2003 to September 2004. However, for the salary for the period from October, 2004 till the final disposal of the application, the DEO shall continue to pay salary to the applicant without prejudice to the rights and contentions of the parties before the Tribunal.

9. Both the petitions are accordingly allowed in terms of the aforesaid directions and subject to the aforesaid conditions.

Rule is made absolute to the aforesaid extent.

(M.S. Shah, J.)

sundar/-